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KOH MONG HUAT

v.

LEMBAGA PADI & BERAS NEGARA

HIGH COURT BORNEO, KUCHING

GEORGE SEAH J

b

[CRIMINAL APPEAL NO. 11 OF 1981]

21 OCTOBER 1981 & 7 NOVEMBER 1981

CRIMINAL PROCEDURE: *Confiscation - Conviction under Lembaga Padi dan Beras Negara Act 1971 - Discretion to order confiscation - Lembaga Padi dan Beras Negara Act 1971, s. 29.*

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The appellant in this case had been convicted on three charges, that is, (i) failing to affix labels or tags on two gunny bags of rice offered for sale; (ii) failing to exhibit his rice retail licence in a conspicuous position at the business premises; and (iii) keeping 67 gunny bags of rice at 35, Jalan Ong Guan Cheng, Bau, which is not a business premises under the said licence. He was fined and in addition the learned Magistrate ordered the 2 gunny bags of rice under the 1st charge and the 67 gunny bags of rice under the 3rd charge to be forfeited. The order confiscating the 67 gunny bags of rice was set aside in the High Court and the learned Magistrate was asked to hold an enquiry to ascertain the facts. After holding the enquiry the learned Magistrate ordered the 67 bags of rice to be confiscated. The appellant appealed.

*d**e*

George Seah J allowed the appeal and quashed the order of forfeiture of the 67 gunny bags of rice. The learned Judge referred to the decision of Syed Agil Barakbah in *PP v. Ong Ah Kan & Ors.* [1976] 2 MLJ 31 where it was held that the power of the trial Court to order confiscation of the subject-matter of the offence charged is not mandatory but discretionary. The discretion must be exercised judicially and not capriciously. According to the notes of enquiry the learned Magistrate made the order of confiscation as he held:

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(a) The move must also be taken by the Court to mean that rice stocks allocated to the accused for sale to the public at Tai Ton bazaar and thereabout had been removed to Bau for sale and as such constitute a removal from sale of this essential commodity from the inhabitants of the area. Bearing in mind the road conditions in the area, this unilateral decision on the part of the accused is forcing the inhabitants there to purchase rice from Bau or do without it would amount to an act of hoarding....

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In view of the facts and circumstances adduced by the enquiry, the Court is of the opinion that the accused is depriving the inhabitants of his locality from a readily available supply of rice was amounting in fact to hoarding it from them from stocks allocated to him for that purpose.

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(b) Accused has testified he was unaware of the need to inform LPN of the change (of address). Accused is not illiterate and has been in the rice business since 1974. Ignorance of law is no defence although the Court does not seek to hastily punish an accused for a mere mistake. However, if a mistake is selfinduced and accused is grossly negligent in serving to his affairs as a prudent man of business should, that gross negligence may amount to knowledge of the circumstances. In view of the facts, the Court finds it hard to believe that accused was totally ignorant of the condition of his licence....

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George Seah J said:

Counsel for the appellant has submitted, rightly so in my opinion, that his client had never been charged for hoarding or concealing rice under Reg. 6(3) of the Lembaga Padi dan Beras Negara (Licencing of Wholesale and Retail Dealers) Regulations 1973 and it was wrong for the trial Magistrate to make such a finding in order to justify his act and order confiscation of the 67 gunny bags of rice. Under the rice retailer licence (Ex. B5) granted to the appellant he is allowed to store not exceeding 168 piculs of rice on the business premises and as long as he maintains this limit he cannot by any stretch of the imagination be said to be hoarding rice without some evidence of concealment. And there was none here. On the facts, the finding of hoarding by the trial Magistrate cannot be supported.

In this case the appellant he said could not successfully plead ignorance of the regulation.

But in my opinion, ignorance of the law, a fortiori, a statutory offence where *mens rea* is not required, is a factor to be considered in order to determine whether or not the appellant had *mens rea* in fact. Now, what are the facts? It seems to be not in dispute that because of poor business at No. 1, Tai Ton Bazaar, Bau, the appellant moved his business to No. 35, Jalan Ong Guan Cheng, Bau (see 2nd charge) in 1976. Since that time, the rice retailer licence of the appellant had been renewed at least on 5 separate occasions by the authority. On these uncontradicted facts it would be quite difficult to hold that the appellant had *mens rea*.

Since the trial Magistrate had ruled that there was hoarding when there was in fact no hoarding in law and since he also ruled that there was some *mens rea* when the facts did not support the finding, the learned Judge held that the trial Magistrate had purported to exercise his discretion on wary principles. The order for forfeiture was therefore quashed.

Cases referred to:

PP v. Ong Ah Kau & Ors. [1976] 2 MLJ 31

Evans v. Bartlam [1937] AC 473

Legislation referred to:

Lembaga Padi dan Beras Negara Act 1971, ss. 22, 29(1)

Lembaga Padi dan Beras Negara (Licensing of Wholesale and Retail Dealers) Regulations 1973, reg. 6(2), (3)

For the appellant - Chan Kay Heng (Chan Khoon Ted with him); Chan & Chan

For the respondent - Nik Hashim bin Nik Abdul Rahman, DPP (Aband Abdul Rahman bin Datuk Haji Abdul Rahim, DPP)

JUDGMENT

George Seah J:

In Criminal Appeal No. KG5/80 where the appellant was Koh Mong Huat alias Kueh Moh Huat and Lembaga Padi dan Beras was the respondent, I set aside the order confiscating the 67 gunny bags of rice and ordered the said trial Magistrate to conduct an enquiry to ascertain the facts whether or not to exercise the power contained in s. 29(1) of the Lembaga Padi dan Beras Negara Act 1971. After holding an enquiry the said Magistrate ordered that the 67 bags of rice comprising Exhibit P5 be forfeited to the Government and are to be disposed of by the Director General. The appellant was dissatisfied with this order and has again appealed to the High Court.

Briefly, the appellant was charged and convicted on his own pleas of (i) failing to affix labels or tabs on 2 gunny bags of rice offered for sale (1st charge), (ii) failing to exhibit his rice retail licence in a conspicuous position at the business premises at No. 35, Jalan Ong Guan Cheng, Bau (2nd charge) and (iii) keeping 67 gunny bags of rice at No. 35, Jalan Ong Guan

- a** Cheng, Bau, which is not a business premises under the said licence (3rd charge). In addition to finding the appellant, the trial Magistrate ordered the 2 gunny bags of rice under the 1 charge and the 67 gunny bags of rice under the 3rd charge to be forfeited.

Regulation 6(2) of the Lembaga Padi dan Beras Negara (Licensing of Wholesale and Retail Dealers) Regulations 1973 provides that:

- b** the licensee shall not store or keep or permit to be stored or kept rice to which this licence is subject except at the business premise or stores specified in the licence.

It is common ground that the business premise specified in the appellant's licence is at No. 1, Tai Ton Bazaar, Bau.

Now, s. 29(1) of the Lembaga Padi dan Beras Negara Act 1971 reads:

- c** 29(1) Where any person is convicted of an offence under this Act or under any regulation made thereunder the Court may order the confiscation in whole or in part of:

- (a) any padi or rice in respect of which the offence has been committed which has been seized by, or has otherwise come into the possession of the Director General or any authorised officer or police officer or any vehicle, vessel or other article, the property of the accused, by means of which such offence has been committed or which is intended to be used for the commission of an offence under this Act or under any regulation made thereunder; or
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- (b) the proceeds of sale of any such padi or rice if it has been sold under s. 22.

- (2) Where confiscation is ordered under subsection 1, the Court shall deliver such padi or rice or the proceeds of the sale thereof (if not already in possession of the Director General) to the Director General or to any person designated by him, and shall give directions as to its disposal.
- e**

In *PP v. Ong Ah Kau & Ors.* [1976] 2 MLJ 31 Syed Agil Barakbah J held that the power of the trial Court to order confiscation of the subject-matter of the offence charged is not mandatory but discretionary. On what basis must the trial Magistrate act when he makes an order of confiscation of the goods in respect of which the offence has been committed? In my opinion, since the Legislature has deemed fit to leave it to the trial Magistrate to exercise the discretionary power, no general rule should be laid down and each case must be decided on its own facts. Needless to say, the discretion must be exercised judicially and not capriciously.

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At p. 12/13 of the notes of enquiry the trial Magistrate said:

- g** The move must also be taken by the Court to mean that rice stocks allocated to the accused for sale to the public at Tai Ton bazaar and thereabout had been removed to Bau for sale and as such constitute a removal from sale of this essential commodity from the inhabitants of the area. Bearing in mind the road conditions in the area, this unilateral decision on the part of the accused is forcing the inhabitants there to purchase rice from Bau or do without it would amount to an act of hoarding ...

- h** In view of the facts and circumstances adduced by the enquiry, the Court is of the opinion that the accused in depriving the inhabitants of his locality from a readily available supply of rice was amounting in fact to hoarding it from them from stocks allocated to him for that purpose. (p. 14).

Counsel for the appellant has submitted, rightly so in my opinion, that his client had never been charged for hoarding or concealing rice under reg. 6(3) of the Lembaga Padi dan Beras Negara (Licensing of Wholesale and Retail Dealers) Regulations 1973 and it was wrong for the trial Magistrate to make such a finding in order to justify his act and order confiscation

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of the 67 gunny bags of rice. Under the rice retailer licence (Exhibit P5) granted to the appellant he is allowed to store not exceeding 168 piculs of rice on the business premises and as long as he maintains this limit he cannot by any stretch of the imagination be said to be hoarding rice without some evidence of concealment. And there was none here. On the facts, the finding of hoarding by the trial Magistrate cannot be supported.

Next, the trial Magistrate said at p. 13:

Accused has testified he was unaware of the need to inform LPW of the change (of address). Accused is not illiterate and has been in the rice business since 1974. Ignorance of law is no defence although the Court does not seek to hastily punish an accused for a mere mistake. However, if a mistake is self-induced and accused is grossly negligent in serving to his affairs as a prudent man of business should, that gross negligence may amount to knowledge of the circumstances. In view of the facts, the Court finds it hard to believe that accused was totally ignorant of the condition of his licence ...

In *Evans v. Bartlam* [1937] AC 473, 479 Lord Atkin said:

For my part I am not prepared to accept the view that there is in law any presumption that anyone, even a Judge, knows all the rules and orders of the Supreme Court. The fact is that there is not and never has been a presumption that everyone knows the law. There is the rule that ignorance of the law does not excuse, a maxim to very different scope and application.

Applying this test to the 3rd charge it is clear that the appellant cannot successfully plead ignorance of reg. 6(2) in answer to the charge.

But in my opinion, ignorance of the law, *a fortiori*, a statutory offence where *mens rea* is not required, is a factor to be considered in order to determine whether or not the appellant had *mens rea* in fact. Now, what are the facts? It seems to be not in dispute that because of poor business at No. 1, Tai Ton bazaar, Bau, the appellant moved his business to No. 35, Jalan Ong Guan Cheng, Bau (see 2nd charge) in 1976. Since that time, the rice retailer licence of the appellant had been renewed at least on 5 separate occasions by the authority.

On these uncontradicted facts it would be quite difficult to hold that the appellant had *mens rea*.

Since the trial Magistrate ruled that there was hoarding when there was in fact no hoarding in law and since he also ruled that there was some *mens rea* when the facts did not support this finding, I am constrained to hold that the trial Magistrate had purported to exercise his discretion on wrong principles. Under the circumstances, I have no alternative but to quash the order of forfeiture of the 67 gunny bags of rice. I order that the 67 gunny bags of rice be returned to the appellant forthwith.

Also found at [1982] CLJ 196

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